

10. Any information contained in the court files of the following cases, or otherwise available to the defendant herein by virtue of the discovery process in those cases, whether or not that material is provided as part of the discovery process herein:

Commodore Bank v. United Waste Services, Inc., Licking Co. Common Pleas Court, 05-CV 562; and,

ELF Company, Inc. USA, et al v. American Aggregates Corp., USA et al, Licking Co. Common Pleas Court, 06-CV 926.

11. Summaries/charts of documents/records in accordance with Evid.R. 1006.

BILL OF PARTICULARS

The defendant is charged in count 1 with Engaging in a Pattern of Corrupt Activities in violation of R.C. 2923.32. This is a felony of the first degree carries a possible sentence of up to 10 years in prison and fines of up to \$20,000. Upon the defendant's release from prison, he will have a mandatory term of 5 years post release control.

The defendant is charged in count 2 with Robbery in violation of R.C. 2911.02(A)(3). This is a felony of the third degree carries a possible sentence of up to 5 years in prison and fines of up to \$10,000. Upon the defendant's release from prison, he may have a term of 3 years post release control.

The defendant is charged in counts 3, 7 and 13 with a total of three counts of *Grand Theft* in violation of R.C. 2913.02(A)(2) and/or (3). These are each felonies of the fourth degree which carry a possible maximum sentence of up to 1 and ½ years in prison on each of these counts, and a possible maximum fine of up to \$5,000. Upon release from prison, the defendant may face up to 3 years of post release control on these offenses.

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The defendant is charged in counts **4, 8 and 14** with three counts of Defrauding Creditors in violation of R.C. 2913.45(A)(1). These are felonies of the fourth degree which carry a possible maximum sentence of up to 1 and ½ years in prison, and a possible maximum fine of up to \$5,000 on each count. Upon release from prison, the defendant may face up to 3 years of post release control on this offense.

The defendant is charged in counts **5, 10 and 12** with a total of three counts of *Aggravated Theft* in violation of R.C. 2913.02(A)(2) and/or (3). These are each felonies of the third degree which carry a possible maximum sentence of up to 5 years in prison, and a possible maximum fine of up to \$10,000 on each count. Upon release from prison, the defendant may face up to 3 years of post release control on these offenses.

The defendant is charged in counts **6, and 11** with two additional counts of Defrauding Creditors in violation of R.C. 2913.45(A)(1). These, however, are each felonies of the *third* degree which carry a possible maximum sentence of up to 5 years in prison, and a possible maximum fine of up to \$10,000 on each count. Upon release from prison, the defendant may face up to 3 years of post release control on these offenses.

The defendant is charged in count **9** with Criminal Simulation in violation of R.C. 2913.32(A)(4). This is a felony of the fourth degree which carries a possible maximum sentence of up to 1 and ½ years in prison, and a possible maximum fine of up to \$5,000. Upon release from prison, the defendant may face up to 3 years of post release control on this offense.

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General Provisions. All offenses are alleged to have occurred in whole or in part in Licking County, Ohio; or as part of a series of offenses some of which have elements that, in

whole or in part, occurred in Licking County, Ohio; or are otherwise properly venued in Licking County, Ohio, under R.C. 2901.12.

The State further alleges that the defendant's liability for any one or more of the offenses alleged herein is:

- as a principal offender, AND/OR,
- as an accomplice under R.C. 2923.02(A)(1)(2)(3) and/or (4); AND/OR,
- as an officer, agent or employee of an organization pursuant to R.C. 2901.24.

Corrupt Activities. Count 1 alleges that the defendant was employed by, or associated with an enterprise and that he conducted or participated directly or indirectly, in the affairs of that enterprise through a pattern of corrupt activity. It is alleged that the "pattern of corrupt activity" consists of the factual allegations that support two or more of the offenses charged in counts 2, 3, 5, 6, 7, 10, 12, and/or 13 of the indictment¹ and/or allegations surrounding the following conduct, although they are not charged as separate counts herein:

- acts constituting Aggravated Theft in violation of Revised Code Section 2913.02(A)(2) and/or (3), for conduct involving the misrepresentation of facts leading to the issuance of a mortgage and related promissory note by National City Mortgage Co. dba Accubanc, in the name of LouAnn Renee Marvin on property located at 300 Johnet Drive, St. Clairsville, Ohio;
- acts constituting Grand Theft in violation of Revised Code Section 2913.02(A)(2) and/or (3), for conduct involving the misrepresentation of facts leading to the sale of 2002 Dodge Ram, from A & B Auto Sales, 5310 Guernsey Street, Bellaire, Ohio (and subsequent financing of said vehicle) to LouAnn R. Marvin; and,

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¹ Whether or not they continue to be prosecuted as separate counts herein, or are later prosecuted as qualifying offenses in violation of federal law in a federal court of law. This notation is added in light of the possibility of the defendant being prosecuted in federal court on the factual basis that supports counts 10 and 11.

- acts constituting Grand Theft in violation of Revised Code Section 2913.02(A)(2) and/or (3), for conduct involving the misrepresentation of facts leading to issuance of, *and/or* the unauthorized use of, one or more credit cards in the name of Fitzgerald Sanitation, and/or Tom Fitzgerald;

The “enterprise” consists of the defendant himself, and/or a loose association of others, known and unknown, and include various company entities including, *but are not limited to*, American Aggregate Corporation USA; MC Riley Properties; United Waste; MCS Co. Inc.; Ireland Equipment Co. USA; and, Eagle Industries, associated with the common purpose of committing theft or fraud related offenses.

The defendant is alleged to have engaged in a series of fraudulent transactions that may appear on their face to be legitimate business transactions, but instead consisted of obtaining sums of money, financing, services and/or property based upon false or misleading representations, including but not limited to putting property in the name of others, or the name of various company entities so that the property could not be as easily traced by creditors back to him. This permitted the defendant to present himself to others as living at a higher standard of living than he could legitimately afford without these fraudulent transactions. The defendant’s fraudulent conduct consisted of affirmative misrepresentations, and/or material omissions of facts. Furthermore, the defendant’s conduct (more specifically laid out below) involved obtaining or using the property or services beyond the express or implied consent of the owners, and/or obtaining the property or services by deception.

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Dennis Hamilton/FLECCO Attachments. Counts 2, 3 and 4 are factually related. It is alleged that the defendant arranged for the purchase/delivery of over \$5,000 in construction/excavating equipment from FLECCO Attachment and/or Buck Equipment on or about January 7, 2005. These items were delivered to one of the defendant's places of business here in Licking County, Ohio, upon the agreement that he would pay for them within 15 days of delivery. As of the date he was indicted (over two years later), he had yet to pay for these items (count 3 – Grant Theft), and their whereabouts are still unknown thus preventing FLECCO Attachment and/or Buck Equipment from recovering that property (count 4 – Defrauding Creditors). On April 18, 2005 an employee of FLECCO Attachment and/or Buck Equipment, Dennis Hamilton, went to the defendant's place of business on Mill Dam Rd., in Hebron, Licking County, Ohio to locate the equipment. When he began to take photographs, the defendant physically accosted him and forcefully took the camera from him without his consent (count 2 – Robbery).

Manhattan Mortgage. Counts 5 and 6 are factually related. It is alleged that the defendant fraudulently managed to obtain over \$100,000 in financing for his then-girlfriend Kristine Lewis for the purchase of a home on Lancaster Rd., Hebron, Licking County, Ohio between July 29, 2003 and November 30, 2003, by providing false information to the mortgage broker/agent for Manhattan Mortgage as to Ms. Lewis' assets, income and/or employment without which the financing would not have been possible. These actions resulted in the mortgage company incurring over \$100,000 in indebtedness by having paid off the seller's loan (count 5 – Aggravated Theft). In the process of this he concealed the fact that he was for all intents and purposes in reality (except in name) the true owner of this property – not Ms. Lewis. Thus he was attempting to avoid creditors coming after his assets to collect on this loan/mortgage (count 6 – defrauding creditors).

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Coughlin/Park National/Chase. Counts 7, 8 and 9 are factually related. These counts allege that the defendant fraudulently obtained title/ownership to several vehicles between August 6, 2005 and December 26, 2005 from the Coughlin Auto dealership(s) here in Licking County, Ohio by presenting them with a falsified power of attorney (count 9 – Criminal Simulation). He was successful in obtaining several vehicles that individually and certainly together exceeded \$5,000 in value, and in the process was able to obtain financing for these vehicles by way of this document (count 7 – Grand Theft). After obtaining one or more of these vehicles in the name of his father, or in a company name, he traded one or more of them in, or removed them from this area, before creditors or law enforcement discovered that the power of attorney was falsified. Indeed the whereabouts of at least one of these vehicles remains unknown even today (count 8 – Defrauding Creditors.) In any event, even if the power of attorney had not been falsified, the income information regarding the defendant's father's purported income (\$22,000 per month) which the defendant provided to the dealer and/or bank to justify their decision to finance the vehicles, was false.

Commodore Bank. Counts 10 and 11 are factually related. These counts allege that the defendant arranged for Commodore Bank to loan him or his companies over \$100,000 for the purchase of various construction-type equipment between January 1, 2005 and April 30, 2005. Some of the arrangements for this loan were discussed at the defendant's place of business in Licking County, Ohio.

As it turned out, the defendant provided false information to the bank both as to his personal wealth, his father's wealth, the size of his or his father's corporate holdings, as well as

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the stated purpose for the use of this money. In fact, the defendant did not use the money loaned to him for the purchase of the equipment he claimed. Instead this money was used for other purposes, and the equipment that the defendant claimed to be buying was already in his possession (count 10 – Aggravated Theft). When the bank discovered the defendant's deceit, the money loaned to him had been used for other purposes so that what should have been a purchase-money loan secured by collateral in the form of specified equipment was instead, in all practical effect, an unsecured loan (count 11 – Defrauding Creditors). Indeed, the bank had to file suit against the defendant.

Elaine Forney/ELF. Count 12 alleges that the defendant defrauded Robert and Elaine Forney, dba, ELF, Inc. of over \$100,000 between June 1, 2003 and March 1, 2005, by convincing them that he and/or his father, were wealthy, successful business men well in excess of that which was the truth. Based upon false representations as to the profitability of his company ventures, the Forneys were convinced to “invest” money in the defendant’s ventures. In the process of this “investment” the defendant successfully took advantage of Mr. Forney’s failing medical condition, and designated him as a corporate officer of one or more companies in order to “inflate” his status to facilitate the use of the Forneys’ credit rating in securing financing for things he (the defendant) actually would own and use. An example of this would be noted in the factual claims below.

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RCD Sales. Counts 13 and 14 are factually related. In these counts the defendant is alleged to have obtained a 2001 Monaco La Palma RV in the name of Robert Forney and/or MCS, Co., Inc. by representing that Mr. Forney had the financial backing of MCS, Inc. and

payments would be made on that purchase by the corporation that the defendant ran. Instead, as before with the use of his father's credit, the defendant sought to use the good credit of Mr. Forney to purchase an item that, for all intents and purposes, was to be his and for which he never intended to fully pay for (count 13, Grand Theft). Indeed, this RV had to be repossessed for non-payment. Before it could be repossessed the defendant had made arrangements to park it at places other than his principle place of business. Moreover, since this RV was put in Mr. Forney's name the defendant's creditors would have a harder time holding him accountable for it (count 14 - Defrauding Creditors.)

STATE'S REQUEST FOR DISCOVERY

Now comes the State of Ohio, by the undersigned Assistant Prosecutor, and requests the Attorney for the Defendant in the above-styled-case to disclose such evidence and material (including names and addresses of any witnesses which may be called to testify) as is required pursuant to Rule 16(C) of the Ohio Rules of Criminal Procedure.



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